

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

MATTHEW SOUTER,)
)
Plaintiff,)
)
v.) C.A. # 1:20-cv-1295 (TSE/JFA)
)
C. T. IRBY, *et al.*)
)
Defendants.)

MOTION IN LIMINE and WAIVER OF HEARING

Plaintiff Matthew Souter, by counsel, moves *in limine* for this court to bar reference, argument, or presentation of evidence at trial by the defense regarding three categories of data, unless defense counsel has secured leave of court to do so, outside of the hearing of the jury. Mr. Souter waives a hearing on this motion and requests its pretrial adjudication on the papers, or its consideration by the Court at trial, should the occasion arise. In support of this motion, Mr. Souter respectfully represents as follows¹:

The Court has granted summary judgment on liability to Mr. Souter on his constitutional claims of unlawful seizure and excessive force, and the case is scheduled to go to trial on damages alone on August 16, 2022.² At trial, which is expected to last one day, Mr. Souter will present evidence of the various ways in which he was injured and otherwise damaged by his

¹Counsel have conferred about this motion but have been unable to resolve the matter at issue.

²Mr. Souter has moved to dismiss his state law claims paralleling his federal constitutional claims, so as to avoid the unnecessary work associated with presenting them to the jury. The parties await the Court's disposition of that motion, which has not been opposed.

false arrest at his Loudoun county farm and by the force used in connection with it. By this motion, Mr. Souter seeks to bar defense reference, direct or indirect, to the following issues, absent prior approval of the Court following consideration before trial, or, if at trial, outside the hearing of the jury:

- * The fact that more than three years before the matters here at issue, Mr. Souter was arrested for throwing branches at a car and for allegedly having brandished a gun at the driver or occupant.
- * The fact that two years before the matters here at issue, Mr. Souter (a) had a dispute with another tenant, whose complaint was deemed unfounded, and (b) had reported suicidal ideation.
- * The fact that Mr. Souter was believed to have guns or rifles at his farm.³

Mr. Souter respectfully submits that none of the above matters is relevant to the sole issue facing the jury at trial: the nature and extent of Mr. Souter's damages from having been falsely arrested and subjected to excessive force. Nor does any of it bear on his claim for punitive damages. None of this evidence is thus admissible under FED. R. EVID. 401. While that alone is dispositive of the matter, it is also obvious that evidence or argument addressing any of the above matters would serve merely to prejudice the jury against Mr. Souter, with no concomitant cognizable benefit in service of the just adjudication of this case. *See* FED. R. EVID. 403. For this reason as well, the evidence or argument at issue should be disallowed, absent express prior approval by the Court.

³The proposed bar would not apply were Mr. Souter to open the door to any of these matters on his direct examination. This is not expected to occur, however.

Mr. Souter waives a hearing on this motion and requests its adjudication on the papers prior to trial, or as a preliminary matter on the day of trial.

Respectfully submitted,

MATTHEW SOUTER,

By counsel

Dated: July 28, 2022

Counsel for Plaintiff:

//s// Victor M. Glasberg

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SouterMatthew\Pldgs\2022-0728-MInLim

Certificate of Service

I, Victor M. Glasberg, hereby certify that on this 28th day of July 2022, I electronically filed the foregoing Motion *in Limine* and Waiver of Hearing with the clerk of the court.

//s// Victor M. Glasberg

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